

A Quest for a Coherent Energy Policy for the EU: Future Steps

Policy Brief

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Summary:

The energy security of the EU is determined by the legal and physical framework (norms and infrastructure) of the internal market as well as by the sufficient capacity of its external connections and interfaces (pipelines and terminals). The internal and external dimensions of energy security are inseparable, though they are shaped by different decision-making procedures. A coherent energy policy should be pursued through a concurrent development of its internal and external dimensions based on the existing primary law of the EU. Among the steps that should be taken are (1) a deep liberalisation of the energy market, including vertical unbundling; (2) a substantial review of trans-European energy networks; (3) stricter enforcement of EU law for non-EU energy companies; (4) the introduction of an informal mechanism of horizontal coordination; and (5) an increase of the import capacity of LNG terminals.

1. Coherent Energy Policy: The Lisbon Treaty is not enough

Even after the ratification of the Lisbon Treaty, the EU will have to cope with a major structural obstacle to an effective and coherent EU energy policy: the interplay between communitarian decision making in energy policy (the internal market, competition rules, a solidarity clause, etc.) and intergovernmental decision making based on parameters set on the national level (e.g. foreign policy, the energy mix). The national level of decision-making will continue to be defined by the dominant influence of state-owned energy companies (national champions). As a result, the EU's effectiveness in the energy dialogue with Russia will remain substantially limited by its complex decision making mechanism. The EU Council decision from March to redefine "*the threshold for deciding actions at Community level*" should be therefore welcome as a step in the right direction.

2. Economic Crisis: New opportunities coming

The economic crisis has inhibited bold plans to enhance EU energy security through massive investments in new infrastructure connections with producing and transit countries. The use of EU financial instruments is also limited by applicable budgetary and financial rules as well as by the reluctance of member states to match the existing funds with additional resources. Moreover, a further implementation of the Third Energy and Climate Package will not decrease the EU dependence on external energy supply in the short term.

On the other hand the European Recovery Plan provides an opportunity to allocate additional resources to investments in interconnections, transit routes and reservoirs and thus to enhance the EU's energy security.

3. External Dimension: Speaking with one voice

*'It is of particular importance for the EU and its Member States to continue delivering consistent messages ("speaking with one voice") to supplier and transit countries.'*²

A detailed analysis of recent cases of supply-cuts has shown that reactions of Member States are determined by the direct impact on the individual Member State rather than by the damage done to the EU as a whole. Even a case of substantial harm to another EU Member State elicits only rhetorical condemnation. The EU will not "speak with one voice" without further integration of the

¹ This brief is based on the research paper "The European Union's Policy Towards Russia – Analysis of Interests and Achievements" by Petr Kratochvíl (Institute of International Relations, Prague), Petra Kuchyňková (Masaryk University, Brno) and Jiří Schneider (Prague Security Studies Institute).

² EU Council - Presidency Conclusions – Brussels, 19/20 March 2009, 7880/09 10 EN.

internal energy market in terms of infrastructure connectivity and legal framework (regulation).

Institutionally, the EU is too slow to react to crises - the expert crisis management groups sometimes meet after the crisis. The Early Warning Mechanism has been proposed and discussed for years with no substantial progress. Finally, following the recent gas crisis, the EU Council in March has called “*to revise legislation on the security of gas supply to suggest an appropriate crisis mechanism.*”

4. Internal Dimension: Creating a single energy market

*The European Council calls on...the European Parliament to conclude an agreement on the third package for the Internal Energy Market before the parliamentary recess.*³

A failure of the EU to enforce anti-trust and pro-competition rules (Article 82 of the EC Treaty) leaves the non-EU energy monopolies (Transneft and Gazprom) in an overly strong position on the EU market.

The recent compromise proposal for an unbundling of gas and electricity markets - to be tabled to a plenary vote before the European Parliament recess - does not suppose or propose a single approach to liberalisation of the common market. It allows Member States to choose between three options for separating supply and production activities from network operations: full ownership unbundling, independent system operator, or independent transmission operator.

In the light of further market liberalisation in the energy sector, any mergers and acquisitions or takeovers by non-EU companies should be considered according to their consequences for energy security. As the recent sale of OMV's share in MOL to Russian Surgutneftegaz has shown, there are differing and conflicting interests among EU member states (what is seen as a purely economic transaction in Austria has stirred serious national security concerns in Hungary). National governments prefer to sacrifice the common market rules in order to protect national champions (e.g. 'Lex-Mol' - a law restricting foreign ownership of strategic companies).

5. Recommendations

- A further liberalisation of the EU's internal energy market and the unbundling of vertically integrated energy companies should be accompanied by a real interconnection of the energy infrastructure. The aim of increasing European investment in networks should garner resources from the Economic Recovery Plan or previously unspent funds and encourage European financial institutions (EIB) and individual Member States to contribute.
- The Commission should be authorised to embark upon a substantial policy review of trans-European energy networks (TEN-E) reflecting recommendations of the EU Energy Security and Solidarity Action Plan⁴ and a newly designed EU Energy Security and Infrastructure Instrument.
- Non-EU energy companies operating on the European market must be forced to comply with the EU rules in the areas of transparency, antitrust law, and competition.
- An informal (voluntary) mechanism of horizontal coordination should be introduced and encouraged, e.g. any EU member state should notify the Commission 30 days prior to signing an energy agreement with a non-EU member country (code of conduct).
- The LNG Action Plan should be given priority to increase the EU's import capacity (LNG terminals) and to decrease its dependence on imports via pipelines in order to strengthen the EU's negotiating position vis-à-vis external gas suppliers.

³ EU Council - Presidency Conclusions – Brussels, 19/20 March 2009, 7880/09 10 EN.

⁴ Second Strategic Review - SER 2; MEMO/08/703; 13/11/2008.